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8 **IN THE UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 JEFF YOUNG, individually and on behalf of
13 all others similarly situated,

14 Plaintiff,

15 v.

16 CREE Inc.,

17 Defendant.
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Civil Action No. 4:17-cv-06252-YGR

**AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMAND

1 12. This Court has personal jurisdiction over Defendant because it has conducted
2 substantial business in this judicial district and division, and intentionally and purposefully directed
3 the LED Lightbulbs into the stream of commerce within the districts of California and throughout
4 the United States.

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1 **PARTIES**

2 13. Plaintiff Jeff Young is a resident of Guerneville, in Sonoma County, California.

3 14. Defendant Cree is an organization incorporated in North Carolina, with its principal
4 place of business at 4600 Silicon Drive, Durham, in Durham County, North Carolina. Defendant
5 transacts or has transacted business in California and within this district, as well as throughout the
6 United States. At all times material to this Complaint, acting alone or in concert with others,
7 Defendant has advertised, marketed, distributed, or sold the LED Lightbulbs to consumers
8 throughout the United States.

9 **FACTUAL ALLEGATIONS**

10 15. It used to be that consumers did not have a great many choices with respect to
11 purchasing lightbulbs—60-watt incandescent bulbs were the norm. However, incandescents wasted
12 a lot of energy. Energy-saving compact fluorescent lamps (CFLs) were fluorescent lamps designed
13 to replace incandescent lamps. LED (light emitting diode) bulbs were introduced to the market
14 relatively soon after CFLs and, because they are even more energy-efficient than CFLs, they quickly
15 overtook their market share. Indeed, LED bulbs are now mostly considered as the mainstream light
16 source with the phasing out of traditional incandescents.

17 16. Incandescent bulbs typically last between 1,000 and 2,000 hours, and CFLs typically
18 last about 10,000 hours. The lifespan for LED replacements is routinely quoted as 25,000 to 50,000
19 hours. Long lifespan, and the reduced power used to create the same amount of light, is what makes
20 this technology so promising and induces consumers to purchase LED Lightbulbs.

21 17. Many of Cree's LED bulbs are sold with packaging which indicates that the product
22 comes with a 10 Year Warranty or "100% Satisfaction Guaranteed." Furthermore, the packages all
23 contain an estimated lifetime use and energy saving, indicating that the products will save consumers
24 money in the long term despite their high purchase price point. These representations signal to the
25 customer that the useful life of the product will be at least 10 years or more.

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18. Furthermore, Cree packaging boasts that their products have a life of “27+ years” or more depending on the bulb.





19. Cree has created an overall marketing scheme that overpromises the longevity of the Lightbulbs. Specifically, the longevity representations (i.e. 27+ years), taken in conjunction with the marketing and advertising of the Lightbulbs detailed herein, signals to the consumer that the bulbs will significantly outlast traditional incandescent bulbs, when it is, in fact, not true.

20. Cree manufactures three categories of LED bulbs: Standard A-Type, Reflector (Flood/Spot), and Specialty. On its website, Cree claims with respect to each type of LED Lightbulb that “the Cree LED bulb is designed to create comfortable living spaces with better colors... [D]esigned to last more than 22 years (25,000 hours)¹, the Cree LED bulb is a worry-free choice backed by a 100% performance satisfaction guarantee.”

¹ Some products, such as the 100 Watt Replacement Standard A-Type bulb, state that they will last for 13 years, or 15,000 hours.

1 21. Defendant manufactures six types of Cree Standard A-Type LED bulbs: a 40 Watt
2 Replacement, 60 Watt Replacement, Connected 60 Watt Replacement, 75 Watt Replacement, 100
3 Watt Replacement, and 3-Way Replacement.

4 22. Cree's website and marketing materials claim, with respect to its 100 Watt
5 Replacement Standard A-Type bulbs that "Unlike some others, Cree doesn't compromise" and
6 "Long LED lifetime lasts 13+ years (15,000 hours), up to 3x as long as the cheap LED bulbs."

7 23. Furthermore, Cree claims with respect to its 40/60/75 Watt Standard A-Type LED
8 bulbs that "Longer LED lifetime lasts 22+ years (25,000 hours), up to 6x as long as the cheap LED
9 bulbs."

10 24. Cree's website and marketing materials also claim with respect to its Connected 60
11 Watt Replacement bulbs that they feature a "25,000-hour lifetime compared to about 1,000 hours for
12 a typical incandescent."

13 25. The Cree Reflector (Flood/Spot) products come in eight variations including: a 75
14 Watt Replacement Flood, a 65 Watt Replacement Flood, 100 Watt Replacement Flood, 85 Watt
15 Replacement Flood, 120 Watt Replacement Flood, 120 Watt Replacement Spot, 75 Watt
16 Replacement Bright Flood, 75 Watt Replacement Bright Spot, Downlight 55 Watt Replacement,
17 Downlight 65 Watt Replacement, and Downlight 100 Watt Replacement.

18 26. All of the Reflector series bulbs advertise a "Longer LED lifetime lasts 22+ years
19 (25,000 hours), up to 6x as long as the cheap LED bulbs." The only exceptions are the Downlight
20 55/65/100 Watt bulbs which advertise "Longer LED lifetime lasts 32+ years (35,000 hours), up to 6x
21 as long as the cheap LED bulbs."

22 27. The Cree LED "Specialty" line comes in two varieties, the 25 Watt Replacement
23 Candelabra and the 40 Watt Replacement Candelabra, both of which advertise "Longer LED lifetime
24 lasts 22+ years (25,000 hours), up to 6x as long as the cheap LED bulbs."

25 28. In addition to the claims about longevity, each Cree product makes a claim about an
26 "estimated" cost savings for the purchaser buying the product, which range based on the cost of the
27 product and the advertised lifespan for the LED lights. For example, the 55 Watt Replacement
28 Downlight advertises an estimated savings of \$177 per bulb, and a yearly energy cost savings of

1 \$1.08. The 100 Watt Replacement Standard A-Type bulb advertises a Lifetime savings of \$138 with
 2 a yearly average energy cost savings of \$1.99. The 40 Watt Replacement Standard A-Type bulb
 3 advertises a lifetime savings of \$95 and a yearly energy cost savings of \$0.66.

4 29. Cree further entices consumers by asserting “When you buy an LED bulb, you expect
 5 it to be in your home for a long time. Cree does too. That’s why Cree designs and tests its bulbs to
 6 last longer, with rated lifetimes equal to or exceeding Energy Star minimum requirements. Most
 7 Cree LED bulbs are rated to last 25,000 hours. So, you’ll be happy to have beautiful Cree LED light
 8 in your home for decades.”

9 **Defendant’s Label Misrepresentations**

10 30. Defendant’s misrepresentations within advertisements and marketing include, but are
 11 not limited to, the following:

- 12 • Defendant’s labels advertise that the products have a 13-32+ years useful
 13 lifetime.
- 14 • Defendant’s labels indicate that the products have a 10 Year Warranty.
- 15 • Defendant’s labels indicate that the products carry a 100% Satisfaction
 16 Guarantee.
- 17 • Defendant’s labels indicate that the products will save consumers hundreds of
 18 dollars per bulb of energy costs over the useful lifetime of the product.

19 **Defendant’s Advertising and Marketing Misrepresentations**

- 20 • “Long LED lifetime lasts 13+ years (15,000 hours), up to 3x as long as the
 21 cheap LED bulbs.”
- 22 • “Longer LED lifetime lasts 22+ years (25,000 hours), up to 6x as long as the
 23 cheap LED bulbs”
- 24 • “Longer LED lifetime lasts 32+ years (35,000 hours), up to 6x as long as the
 25 cheap LED bulbs.”
- 26 • “[D]esigned to last more than 22 years (25,000 hours), the Cree LED bulb is a
 27 worry-free choice backed by a 100% performance satisfaction guarantee The
 28 LED general purpose bulbs “last up to 25,000 hours, equal to 25
 incandescents.”

- 25,000-hour lifetime compared to about 1,000 hours for a typical incandescent.”
- “Most Cree LED bulbs are rated to last 25,000 hours. So, you’ll be happy to have beautiful Cree LED light in your home for decades.”

31. In addition, the various lifetime savings estimations asserted by Defendant in its advertising are illusory and incorrect.

32. Furthermore, Cree ran several internet and television ads which make various claims regarding the longevity of the bulbs, especially as they relate to the lifetime of the Cree bulbs in comparison to incandescent bulbs. For instance, one ad features an actor who metaphorically buries an incandescent bulb – set into a tiny bulb-shaped coffin – to emphasize that the new Cree bulb heralds the death knell of the incandescent bulb². Still other television and internet ads, featuring the same actor, make other claims about Cree’s superior lifetime and performance in comparison to incandescent bulbs.³ These advertisements were part of Cree’s pervasive marketing efforts and were viewed by Plaintiff and members of the class.

33. Through the advertisements described above and others, Cree represented, directly or indirectly, expressly or by implication, that the LED Lightbulbs would last for specified periods or lifespans. These representations are false. The Lightbulbs do not in fact last for the warranted time or lifespan.

Online Customer Complaints

34. Evidencing the impact of Cree’s plan and scheme, numerous Cree customers from multiple states have lodged complaints online. Consumers regularly complain that they were lured by Cree’s representations of the lifespan of the LED Lightbulbs but the Lightbulbs failed well before the promised time frame.

² See “Eulogy”, at <https://www.ispot.tv/ad/7o4P/cree-bulbs-eulogy> (last viewed 4/30/18);

³ See, e.g., “Obsolete”, at <https://www.ispot.tv/ad/7Km3/cree-bulbs-the-room-of-enlightenment-obsolete-ft-lance-reddick> (last viewed 4/30/18); and “What Caboodle Actually Means”, at <https://www.ispot.tv/ad/AEuk/cree-led-bulbs-what-caboodle-actually-means-feat-lance-reddick> (last viewed 4/30/18); and “Child” at https://www.youtube.com/watch?v=YT8Lhb0_y-0 (last viewed 4/30/18); and “1879” at <https://www.youtube.com/watch?v=LPn8EodTjQA> (last viewed 4/30/18).

35. Set forth below is a small sample of customer complaints made on the Internet regarding Defendant's fraudulent scheme:

- Has anyone else had issues with the Cree 60 watt equivalent soft white bulbs that home depot sells? Out of the 1st four pack I bought, 1 went bad in about 3 months. I got 15 more from Duke energy at reduced prices and 3 of them have gone bad. Two I have yet to open so out of the 17 used, 4 have gone bad. That a 24% failure rate on a 10 year warranty bulb in a matter of months.
...
Most have gone bad with reduced output and some flash at reduced output. One was flashing and I actually her it pop inside and it went dark. It's definitely the electronics as all the LEDs still worked. These are all in open bathroom fixtures by the way.⁴
- CREE has really, really stepped down quality. I bought 2 CREE daylight LED bulbs and two months after putting them in the rubbery coating they had on on the plastic globe around the diodes started to cra
- Man, I was so happy with these things...up until they started going out. I bought a bunch of these (qty. 10) less than 2-3 months ago. So far 4 of them have burnt out already. They start flickering and with a pop or a fizzle, they are gone.

I have since switched over to Philips in hopes that they will last longer.

What sucks is the warranty for these is such that you have to have the original boxes, a store receipt, and pay to ship them to them for review when they go out. Who keeps the packaging? Especially when they boast a crazy long life warranty. Guess I should have known, too good to be true right?⁵
- Great at first but both ones I bought started strobing after only a year and had to get rid of them. Not anywhere near the rated life I expected.⁶
- Was a beautiful light for about 3 weeks, after which point it burnt out. I've never had a bulb in a simple desk lamp burn out so quickly.⁷

⁴ <http://www.dslreports.com/forum/r29858942-Rant-CREE-LED-Bulbs-going-bad>

⁵ https://www.amazon.com/gp/customer-reviews/R3NMC4TJ8AAE3U/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00BFXFP0SS

⁶ https://www.amazon.com/gp/customer-reviews/R29EY7QY334JCL/ref=cm_cr_ar_p_d_rvw_ttl?ie=UTF8&ASIN=B00BFXFP0SS

⁷ https://www.amazon.com/gp/customer-reviews/RTB8E4XK8T1HV/ref=cm_cr_ar_p_d_rvw_ttl?ie=UTF8&ASIN=B00BFXFP0SS

- I bought 7 of the BR30 lamps 5/24/15 and already 3 of them have failed. Sending the lamps to Cree rather than Home Depot (who was the only re-seller of the lamp) seems designed to deter anyone from using the warranty. I purchased 6 GE reveal branding LED BR30s at the same time and not one has failed. I have a 2700sq/ft home with all LEDs lamps from several other brands (including walmart store brand level). So far only these CREE branded bulbs have failed. I have very little faith that the remainder of the bulbs will last much longer. Very disappointing.⁸

INDIVIDUAL PLAINTIFF FACTS

36. Plaintiff Jeff Young is a resident of Geurneville, California who purchased three 100 Watt Standard A-Type bulbs on or around April of 2015 from WalMart. He paid approximately \$15-20 for each bulb. Prior to purchasing the bulbs, Mr. Young reviewed the representations on the label which compared the Cree bulbs to other LED and non-LED light bulbs. Those representations included, but are not necessarily limited to: representations that he would save upwards of \$100 per bulb over the life of the bulb; representations that the bulb would perform better than other less-expensive LED and non-LED bulbs; representations that the bulbs were guaranteed and/or warranted for performance.

37. In addition, Mr. Young viewed some internet and television advertisements by Cree prior to purchasing that contained representations that the bulbs would last up to 25 times longer than incandescent bulbs and use a fraction of the energy of incandescent bulbs. Mr. Young relied on these representations, and in doing so decided to purchase the Cree LED bulbs. Were it not for the marketing representations made by Defendant that he relied upon, Mr. Young would not have bought the Cree LED bulbs, or would not have paid a price premium for him. Within months, all three bulbs burned out even though Mr. Young used them according to the instructions. Mr. Young attempted to contact Cree to request replacement but was unsuccessful in contacting Cree through their website. Mr. Young also considered returning the bulbs to Wal-Mart but was told by Wal-Mart that it was too late to return them to the store.

CLASS ACTION ALLEGATIONS

⁸ <https://www.facebook.com/atka1971/posts/10156193064939672:0>

1 38. Plaintiff brings this suit as a class action on behalf of himself and all other similarly
 2 situated Cree customers (the “Class”) pursuant to Fed.R.Civ.P.23. Plaintiff seeks to represent the
 3 following Class:

4 All persons in California who purchased the LED Lightbulbs during
 5 the applicable limitations period. Excluded from the Class are (a) any
 6 Judge or Magistrate presiding over this action and members of their
 7 families; (b) the Defendant and its subsidiaries and affiliates; and (c)
 8 all persons who properly execute and file a timely request for
 exclusion from the Class (the “Class”).

9 39. Plaintiff reserves the right to re-define the Class (hereinafter referred to as the
 10 “Class,” unless otherwise specified) prior to moving for class certification.

11 40. The exact number of Class members is unknown as such information is in the
 12 exclusive control of Defendant. Plaintiff, however, believes that the Class encompasses thousands of
 13 individuals who are geographically dispersed throughout California. Therefore, the number of
 14 persons who are members of the Class described above are so numerous that joinder of all members
 15 in one action is impracticable.

16 41. Questions of law and fact that are common to the entire Class predominate over
 17 individual questions because the actions of Defendant’s complained of herein were generally
 18 applicable to the entire Class. These legal and factual questions include, but are not limited to:

- 19 a. The nature, scope and operations of Defendant’s wrongful practices;
- 20 b. Whether Defendant marketed, designed, manufactured and sold LED lights
 21 into the stream of commerce which do not last as long as their represented
 22 and/or warranted life span and do not provide the promised costs savings;
- 23 c. Whether the LED lights prematurely fail before their represented and/or
 24 warranted life span
- 25 d. Whether the LED lights are capable of and provide the costs savings promised
 26 and represented by Defendants over the represented and warranted life span
 27 for the products;

- e. Whether Defendant knew and failed to disclose that the LED lights were not durable and long lasting as they represented, promised and warranted and instead would fail well before their projected life span;
- f. Whether Defendant knew and failed to disclose that Led lights were not durable and long lasting as they represented, promised and warranted , and as such, the consumer would not achieve or realize the promised cost savings over the warranted life span for LED lights;
- g. Whether Defendant engaged in unconscionable, deceptive, misleading and/or fraudulent conduct and/or practices with respect to the sale of the LED lights or processing and handling of warranty claims ;
- h. Whether Defendant misrepresented, omitted or concealed information regarding the characteristics, quality, serviceability or longevity of the LED Lights;
- i. Whether Defendant's marketing of the LED lights was false, deceptive, and misleading to a reasonable consumer:
- j. Whether Defendant's conduct violated California law and whether based on the substantial connection between the wrongful conduct in question and Defendant's operations in California, whether such law can be applied to the claims of all Class Members;
- k. Whether Defendant's conduct constituted a breach of applicable warranties and/or gives rise to claims in *assumpsit*;
- l. Whether, as a result of Defendant's actions, omissions and/or misrepresentations of material facts related to the LED Lightbulbs, Plaintiff and members of the Class have suffered an ascertainable loss of monies and/or property and/or value;
- m. Whether Plaintiff and the Class members paid a price premium for the Cree LED Lightbulbs that they would not have but for the false marketing representations by Defendant.

1 n. Whether Plaintiff and Class members are entitled to monetary damages and/or
2 other remedies and, if so, the nature of any such relief.

3 42. Plaintiff's claims are typical of the members of the Class because Plaintiff and Class
4 members were injured by the same wrongful practices. Plaintiff's claims arise from the same
5 practices and course of conduct that gives rise to the claims of the Class members, and are based on
6 the same legal theories. Plaintiff has no interests that are contrary to or in conflict with those of the
7 Class he seeks to represent.

8 43. Questions of law or fact common to Class members predominate. A class action is
9 superior to other available methods for the fair and efficient adjudication of this lawsuit, because
10 individual litigation of the claims of all Class members is economically unfeasible and procedurally
11 impracticable. While the Class members' aggregate damages are likely to be in the millions of
12 dollars, the individual damages incurred by each Class member are, as a general matter, too small to
13 warrant the expense of individual suits. The likelihood of individual Class members prosecuting
14 separate individual claims is remote, and even if every Class member could afford individual
15 litigation, the court system would be unduly burdened by the individual litigation of such cases.
16 Individualized litigation would also present the potential for varying, inconsistent, or contradictory
17 judgments and would magnify the delay and expense to all parties and to the court system resulting
18 from multiple trials on the same factual issues. Plaintiff knows of no difficulty to be encountered in
19 the management of this action that would preclude its maintenance as a class action. Certification of
20 the Class under Rule 23(b)(3) is proper.

21 44. Relief concerning Plaintiff's rights under the laws herein alleged and with respect to
22 the Class would be proper. Defendant has acted or refused to act on grounds generally applicable to
23 the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with
24 regard to Class members as a whole and certification of the Class under Rule 23(b)(2) proper.

25 **TOLLING OF STATUTES OF LIMITATIONS**

26 45. Discovery Rule: Plaintiff's and class members' claims accrued upon discovery that
27 the LED bulbs did not have the useful life advertised by Defendant. While Defendant knew, and
28

1 concealed, these facts, Plaintiffs and class members could not and did not discover these facts
2 through reasonable diligent investigation until after they experienced the product's failure.

3 46. Active Concealment Tolling: Any statutes of limitations are tolled by Defendant's
4 knowing and active concealment of the facts set forth above. Defendant kept Plaintiff and all class
5 members ignorant of vital information essential to the pursuit of their claim, without any fault or
6 lack of diligence on the part of Plaintiff. The details of Defendant's efforts to conceal its above-
7 described unlawful conduct are in its possession, custody, and control, to the exclusion of Plaintiff
8 and class members, and await discovery. Plaintiff could not have reasonably discovered these facts,
9 nor that Defendant failed to disclose material facts concerning its performance

10 47. Estoppel: Defendant is and was under a continuous duty to disclose to Plaintiffs and
11 all class members the true character, quality, and nature of the product. At all relevant times, and
12 continuing to this day, Defendant knowingly, affirmatively, and actively concealed the true
13 character, quality, and nature of the products. The details of Defendant's efforts to conceal its above-
14 described unlawful conduct are in its possession, custody, and control, to the exclusion of Plaintiff
15 and class members, and await discovery. Plaintiff reasonably relied on Defendant's active
16 concealment. Based on the foregoing, Defendant is estopped from relying on any statutes of
17 limitation in defense of this action.

18 48. Equitable Tolling: Defendant took active steps to conceal and misrepresent material
19 facts relating to the products' performance. The details of Defendant's efforts are in its possession,
20 custody, and control, to the exclusion of Plaintiff and class members, and await discovery. When
21 Plaintiff learned about this material information, they exercised due diligence by thoroughly
22 investigating the situation, retaining counsel, and pursuing their claims. Should such tolling be
23 necessary, therefore, all applicable statutes of limitation are tolled under the doctrine of equitable
24 tolling.

25 **COUNT I**

26 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW, BUSINESS AND**
27 **PROFESSIONS CODE § 17200, *et seq.***

1 49. Plaintiff re-alleges and incorporates by reference the allegations contained in all
2 preceding paragraphs of this Complaint as though set forth fully herein.

3 50. Business & Professions Code § 17200, *et seq.* prohibits acts of “unfair competition,”
4 which is defined by Business & Professions Code § 17200 as including any “any unlawful, unfair or
5 fraudulent business act or practice”

6 51. Defendant has engaged in unfair competition and unfair, unlawful or fraudulent
7 business practices by the conduct, statements, and omissions described above by (1) making material
8 representations about the quality, characteristics, reliability, durability, longevity and benefits of the
9 LED Lightbulbs such as set forth herein, upon which Plaintiff was exposed to and reasonably relied
10 as they were a substantial factor in his purchase decision, and/or (2) omitting the material facts about
11 the actual lifespan of the LED Lightbulbs upon which Plaintiff would have relied had such facts
12 been timely and adequately disclosed.

13 52. Defendant’s representations set forth above regarding the qualities, reliability,
14 durability and lifespan of the LED Lightbulbs are false.

15 53. Defendant concealed from Plaintiff and Class members the material facts that the
16 LED Lightbulbs would not actually last for the period or lifespan represented and that the Plaintiff
17 and Class members would not realize the promised cost savings.

18 54. Defendant should have disclosed this information because it was in a superior
19 position to know the true facts related to the LED Lightbulbs, was aware of the nature, qualities,
20 reliability, durability and lifespan of the LED Lightbulbs at the time it sold the Lightbulbs to
21 consumers, and Plaintiff and Class members could not reasonably be expected to learn or discover
22 the true facts related to the LED Lightbulbs until actual failure.

23 55. The omissions and acts of concealment by Defendant pertained to information
24 material to Plaintiff and Class members and would have been likely to deceive them based on
25 reasonable consumers’ expectations and assumptions as to the lifespan of the LED Lightbulbs. Facts
26 that indisputably pertain to the lifespan of the Lightbulbs—that they were specifically represented to
27 last for a certain period of time-- are presumptively material to the reasonable consumer. An
28 inference of reliance on such facts thus exists as a reasonable person would attach importance or

1 significance, in determining whether to purchase the LED Lightbulbs at the prices they did, to the
 2 lifespan of the Lightbulbs. Had Defendant fully and adequately disclosed that its representations
 3 regarding the lifespan of the Lightbulbs were false or unsubstantiated, Plaintiff and the Class would
 4 not have purchased the LED Lightbulbs, or in the alternative would have paid less for.

5 56. These acts and practices have also deceived Plaintiff and are likely to deceive persons
 6 targeted by such statements and omissions. In misrepresenting and failing to disclose material
 7 information regarding the lifespan of the LED Lightbulbs from Plaintiff and Class members,
 8 Defendant breached its duties to disclose these facts, violated the UCL, and caused injuries to
 9 Plaintiff and Class members. The injuries suffered by Plaintiff and Class members are also greatly
 10 outweighed by any potential countervailing benefit to consumers or to competition. Nor are they
 11 injuries that Plaintiff and Class members should or could have reasonably avoided.

12 57. Plaintiff seeks to enjoin further unlawful, unfair and/or fraudulent acts or practices by
 13 Defendant, to obtain restitutionary disgorgement of all monies and revenues generated as a result of
 14 such practices, and all other relief allowed under Cal. Bus. & Prof. Code § 17200.

15 **COUNT II**

16 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW, BUSINESS AND** 17 **PROFESSIONS CODE § 17500, *et seq.***

18 58. Plaintiff re-alleges and incorporates by reference the allegations contained in all
 19 preceding paragraphs of this Complaint as though set forth fully herein.

20 59. Defendant does business throughout the United States including within California.

21 60. The Defendant is a “person” within the meaning of Civil Code §§ 1761(c) and 1770,
 22 and have provided “goods” within the meaning of Civil Code §§ 1761(b) and 1770.

23 61. Plaintiff and members of the proposed class are “consumers” within the meaning of
 24 Civil Code §§ 1761(d) and 1770

25 62. In violation of California Business & Professions Code § 17500, *et seq.*, Defendant
 26 has disseminated or caused to be disseminated deceptive advertising misrepresentations, omissions
 27 and practices, including the statements referenced herein. These statements are actionable violations
 28

1 of § 17500 in that Defendant expressly states that the LED Lightbulbs have attributes which they do
2 not possess.

3 63. Defendant's advertising misrepresentations, omissions, and practices made in
4 connection with the sale of the LED Lightbulbs are unfair, deceptive and/or misleading within the
5 meaning of California Business & Professions Code § 17500, et seq. These representations are
6 likely to deceive reasonable consumers.

7 64. In making and disseminating the statements alleged herein, Defendant knew or should
8 have known that the statements were and are misleading or likely to mislead for the reasons set forth
9 above.

10 65. Had the Defendant not misrepresented and concealed material facts about the LED
11 lights, Plaintiff, members of the proposed class, and reasonable consumers would not have
12 purchased or would have paid less for the LED lights.

13
14 66. As detailed above, Plaintiff and the Class suffered injuries in fact and losses of money
15 as a result of Defendant's unfair and deceptive acts and practices, which violate § 17500, et seq.

16 67. Pursuant to California Business & Professions Code § 17535, Plaintiff and members
17 of the Class seek, and are entitled to: an order enjoining Defendant from continuing to make false
18 and misleading statements concerning the LED Lightbulbs; restitution and disgorgement of any and
19 all excessive amounts paid to Defendant or its agents; equitable relief pursuant to Cal. Code of Civil
20 Procedure § 384; pre- and post-judgment interest at the highest rate allowable by law; and payment
21 of attorney's fees and costs pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5, the common
22 fund and private attorney general doctrines.

23 68. As a result of Defendant's numerous violations of the false advertising statute,
24 Plaintiff and Class members are entitled to equitable relief as the Court deems appropriate.

25 **COUNT III**

26 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT,**

27 **CALIFORNIA CIVIL CODE § 1750 et seq.**

1 69. Plaintiff re-alleges and incorporated by reference the allegations contained in all
2 preceding paragraphs of this Complaint as though set forth fully herein.

3 70. This cause of action is brought pursuant to the California Consumers Legal Remedies
4 Act (“CLRA”), Civil Code section 1750, *et seq.* Plaintiff brings this action on his own behalf and on
5 behalf of the Class members, all of whom are similarly situated consumers within the meaning of
6 Civil Code section 1781.

7 71. The acts and practices described in this Complaint were intended to result in the sale
8 of goods, specifically the LED Lightbulbs, in consumer transactions. Defendant has violated, and
9 continues to violate, the CLRA, Civil Code section 1770, including but not limited to subdivisions
10 (a)(5), (a)(7), (a)(9), and (a)(16) by:

- 11 • Representing that the LED Lightbulbs have characteristics or benefits, as
12 described herein, which the Lightbulbs do not have, or omitting material facts
13 to the contrary.
- 14 • Representing that the LED Lightbulbs are of a particular standard or quality,
15 when the Lightbulbs are of another, or omitting material facts to the contrary.
- 16 • Advertising the LED Lightbulbs as having the potential to bring about certain
17 results with the intent to sell the Lightbulbs without actually having those
18 capabilities.
- 19 • Representing that the LED Lightbulbs were supplied in accordance with
20 previous representations, when they were not, or omitting material facts to the
21 contrary.

22 72. Defendant made material representations about the quality, characteristics, reliability
23 and benefits of the LED Lightbulbs such as referenced herein, upon which Plaintiff was exposed to
24 and reasonably relied as they were a substantial factor in his purchase decision, and/or omitted the
25 material facts about the actual lifespan of the LED Lightbulbs upon which Plaintiff would have
26 relied had such facts been timely and adequately disclosed. Defendant’s representations set forth
27 above regarding the qualities and lifespan of the LED Lightbulbs were false when made. Defendant
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1 concealed from Plaintiff and Class members the material facts that the LED Lightbulbs would not
2 actually last for the promised length of time.

3 73. The omissions and acts of concealment by Defendant pertained to information
4 material to Plaintiff and Class members in that it would have been likely to deceive them based on
5 reasonable consumers' expectations and assumptions. These facts are or would be presumptively
6 material to the reasonable consumer. Had Defendant fully and adequately disclosed true qualities of
7 the LED Lightbulbs, Plaintiff and Class Members would not have purchased the Lightbulbs or paid
8 the prices that they did for them.

9 74. Plaintiff and the Class members have thus suffered damage as a result of these
10 violations.

11 75. Defendant concealed the true qualities and lifespan of the LED Lightbulbs even
12 though it was or reasonably should have been aware of this information.

13 76. Defendant's misrepresentations and omissions of material fact described in the
14 preceding paragraphs were at a minimum made without the use of reasonable procedures adopted to
15 avoid such errors.

16 77. Defendant, directly or indirectly, has engaged in substantially similar conduct with
17 respect to Plaintiff and each member of the Class.

18 78. Unless Defendant is enjoined from engaging in such wrongful actions and conduct in
19 the future, members of the consuming public will be further damaged by Defendant's conduct.

20 79. Plaintiff and the Class are entitled to equitable relief on behalf of the members of the
21 Class in the form of an order, pursuant to Civil Code section 1780, subdivisions (a)(2)-(5),
22 prohibiting Defendant from continuing to engage in the above-described violations of the CLRA, to
23 provide restitution or actual damages in the form of all monies paid for the inflated sale price of the
24 LED Lightbulbs, and any other relief the court deems proper. Plaintiff further seeks reasonable
25 attorneys' fees under Civil Code section 1780(e).

26 80. Pursuant to California Civil Code section 1782, Plaintiff has sent a demand letter to
27 Defendant via registered mail, and defendant has not responded. Plaintiff will amend the complaint
28 once defendant has responded to the demand letter.

COUNT IV

FRAUDULENT MISREPRESENTATION AND CONCEALMENT

81. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Complaint as though set forth fully herein.

82. Defendant, either directly and/or through agents, made material misrepresentations and concealed material information concerning the qualities, characteristics, reliability, durability, longevity, benefits and lifespan of the LED Lightbulbs from its customers as set forth above.

83. At the times Defendant misrepresented and concealed these material facts, Plaintiff and the members of the Class had no knowledge of the material facts that Defendant misrepresented and failed to disclose.

84. At all times relevant, Defendant had superior knowledge regarding the qualities, characteristics, reliability, durability, longevity, benefits and lifespan of the LED Lightbulbs than did Plaintiff and Class members.

85. By misrepresenting and failing to disclose material facts, Defendant intended that the Plaintiff and Class members would rely upon such failures to disclose material facts.

86. Defendant owed a duty to Plaintiff and Class members to disclose material facts related to their purchase of the LED lights, including but not limited to the foregoing facts that concerned the qualities, characteristics, reliability, durability, longevity, benefits and lifespan of the LED Lightbulbs.

87. Plaintiff and all Class members did, in fact, rely upon such Defendant's failure to disclose all material facts and, as a consequence, became customers of Defendant and purchased the LED lightbulbs. Plaintiff and Class members relied to their detriment on Defendant's omissions of material facts and upon representations delivered through Defendant's marketing materials, including its website and advertisements. Had Defendant disclosed to customers that its representations regarding the qualities, characteristics, reliability, durability, longevity, benefits and lifespan of the Lightbulbs were false or were not substantiated at the time that were made, Plaintiff and Class members would not have purchased the LED Lightbulbs from Defendant, or would have paid less for the LED lights.

1 103. Defendant is a “supplier” and “warrantor” within the meaning of the
2 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4) – (5). Defendant is also a “manufacturer” and
3 “seller” within the meaning of California law, respectively.

4 104. Defendant made promises and representations in an express warranty provided to all
5 consumers, which became the basis of the bargain between Plaintiff, Class members and Defendant.

6 105. Defendant’s written affirmations of fact, promises and/or descriptions as alleged are
7 each a “written warranty.” The affirmations of fact, promises and/or descriptions constitute a
8 “written warranty” within the meaning of the Magnuson-Moss Act, 15 U.S.C. §2301(6).

9 106. By placing such products into the stream of commerce, by operation of law including
10 the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, and the Uniform Commercial Code §
11 2-314 and other applicable state laws, including the Song-Beverly Act, Defendants also impliedly
12 warranted to Plaintiff and Class members that the LED lightbulbs were of merchantable quality (i.e.,
13 a product of a high enough quality to make it fit for sale, usable for the purpose it was made, of
14 average worth in the marketplace, or not broken, unworkable, contaminated or flawed or containing
15 a defect affecting the safety of the product), would pass without objection in the trade or business,
16 and were free from material defects, and reasonably fit for the use for which they were intended.

17 107. Defendant breached all applicable warranties because the products suffer from a
18 latent and/or inherent defect that causes it to fail, rendering it unfit for its intended use and purpose.
19 This defect substantially impairs the use, value and safety of the Product.

20 108. The latent and/or inherent defect at issue herein existed when the LED blulbs left
21 Defendants’ possession or control and was sold to Plaintiff and the Class members. The defect was
22 undiscoverable to Plaintiff and the Class members at the time of purchase.

23 109. All conditions precedent to seeking liability under this claim for breach of
24 express and implied warranty have been performed by or on behalf of Plaintiff and others in terms of
25 paying for the goods at issue. Defendant, having been placed on reasonable notice of the defect in
26 the Products and breach of the warranties, have had an opportunity for years to cure the defect for
27 Plaintiff and all Class members, but has failed to do so.

110. Defendant was on notice of the problems with the LED bulbs based on the complaints it received directly from Plaintiff and Class members, and from the plethora of public complaints.

111. Defendant breached their express and implied warranties, as the Product did not contain the properties Defendant represented.

112. Defendant's breaches of warranty have caused Plaintiffs and Class members to suffer injuries, paying for defective products, and entering into transactions they would not have entered into for the consideration paid. As a direct and proximate result of Defendant's breaches of warranty, Plaintiff and Class members have suffered damages and continue to suffer damages, including economic damages in terms of the cost of the Product and the cost of efforts to mitigate the damages caused by same.

113. As a result of the breach of these warranties, Plaintiffs and Class members are entitled to legal and equitable relief including damages, costs, attorneys' fees, rescission, and/or other relief as deemed appropriate, for an amount to compensate them for not receiving the benefit of their bargain.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and members of the Class, respectfully requests that this Court:

114. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying one or more Classes as defined above;

115. Appoint Plaintiff as the representative of the Class and his counsel as Class counsel;

116. Award all actual, general, special, incidental, statutory, injunctive, and consequential damages to which Plaintiff and Class members are entitled;

117. Award pre-judgment and post-judgment interest on such monetary relief;

118. Award reasonable attorneys' fees and costs; and

119. Grant such further relief that this Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury on all issues within the instant action so triable.

Dated April 30, 2018

Respectfully submitted,

s/ Michael McShane

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